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EXAMINER

KRECK, JOHN J

ART UNIT PAPER NUMBER

3673

DATE MAILED: 12/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/841,305

Applicant(s)

WELLINGTON ET AL.

Examiner

John Kreck

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 2039-2116 and 5396-5403 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2039-2116 and 5396-5403 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11-15. 6) ☐ Other:

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DETAILED ACTION

The amendment dated 9/30/02 has been entered.

Claims 2039-2116 and 5396-5403 are pending in this application.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 2039-2116, and 5396-5403 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending applications (including the present application): 09/840,936; 09/840,937; 09/841,000; 09/841,060; 09/841,061; 09/841,127; 09/841,128; 09/841,129; 09/841,130; 09/841,131; 09/841,170; 09/841,193; 09/841,194; 09/841,195; 09/841,238; 09/841,239; 09/841,240; 09/841,283; 09/841,284; 09/841,285; 09/841,286; 09/841,287; 09/841,288; 09/841,289; 09/841,290; 09/841,291; 09/841,292; 09/841,293; 09/841,294; 09/841,295; 09/841,296; 09/841,297; 09/841,298; 09/841,299; 09/841,300; 09/841,301; 09/841,302; 09/841,303; 09/841,304; 09/841,305; 09/841,306; 09/841,307; 09/841,308; 09/841,309; 09/841,310; 09/841,311; 09/841,312; 09/841,429; 09/841,430; 09/841,431; 09/841,432; 09/841,433; 09/841,434; 09/841,435; 09/841,436; 09/841,437; 09/841,438; 09/841,439; 09/841,440; 09/841,441; 09/841,442; 09/841,443; 09/841,444; 09/841,445; 09/841,446; 09/841,447; 09/841,448; 09/841,449; 09/841,488; 09/841,489; 09/841,490; 09/841,491; 09/841,492; 09/841,493; 09/841,494; 09/841,495; 09/841,496; 09/841,497; 09/841,498; 09/841,499; 09/841,500; 09/841,501; 09/841,502; 09/841,632; 09/841,633; 09/841,634; 09/841,635; 09/841,636; 09/841,637; 09/841,638; and 09/841,639.

Although the conflicting claims are not identical, they are not patentably distinct from other. At least one other application includes a set of claims which are

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substantially identical to the claims in this application; but which call for coal containing formation rather than hydrocarbon. Since applicant has defined hydrocarbon containing formation as including coal; this would be an obvious variation.

37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. The discussion below sets forth the Office's basis for its determination that each of these ninety one applications contains at least one claim that conflicts with another one of the related co-pending applications identified above. Each of these ninety one applications includes the same specification and collectively these ninety one applications present over five thousand claims. The Office has shown that each of these ninety one applications contains at least one claim that conflicts with another one of the related co-pending applications identified above, and an analysis of each of five thousand claims in the ninety one related co-pending applications would be an extreme burden on the Office requiring tens of thousands of claim comparisons. Therefore, the Office is requiring applicant to resolve the conflict between these applications and comply with 37 CFR 1.78(b) by either:

- (1) filing a terminal disclaimer in each of the related ninety-one applications terminally disclaiming each of the other ninety applications; or,
- (2) provide a statement that all claims in the ninety applications have been reviewed by applicant and that no conflicting claims exist between the

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applications. Such a statement must set forth factual information to identify how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified ninety applications.

See MPEP 804.02 IV for a discussion of multiple double patenting rejections and the requirements for a single terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2039, 2041, 2044, 2045, 2049, 2065, 2072-2074, 2078, 2080, 2083, 2088, 2104, and 2111-2113 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsai, et al. (U.S. Patent number 4,299,285).

The Tsai reference teaches a method for treating a hydrocarbon formation in situ comprising providing heat from one or more heaters to a portion of the formation; allowing heat to transfer, and producing a mixture as called for in claim 2039. Although the Tsai reference fails to explicitly disclose the moisture content less than about 15%; this is inherent feature of most bituminous coal formations, as shown on figure 2.11 and on section 4.3 of "Coalbed Methane".

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With regards to claim 2041; the Tsai reference teaches a pyrolysis temperature range within a section of the formation between 270 and 400°C (see col. 3, line 42).

With regards to claim 2044; the Tsai reference teaches a flameless combustor (see col. 2, line 32).

With regards to claim 2045; the Tsai reference teaches a natural distributed combustor (see col. 2, line 32).

With regards to claim 2049; the Tsai reference does not explicitly teach the transferring by conduction; however this is inherent in a solid substance such as coal. Even though the bulk of the heating in the Tsai method may be done by convection; it is apparent that some unfractured coal must remain, and thus the allowing heat to transfer comprises transferring heat substantially by conduction (that is, substantially within the unfractured portions).

With regards to claim 2065, the Tsai reference teaches the pressure greater than 2.0 bar.

With regards to claims 2072 and 2073; the Tsai reference teaches the permeability greater than about 100 md in table 1. The uniform increase in permeability is inherent.

With regards to claim 2074, although the Tsai reference fails to explicitly disclose a Fischer Assay; it is apparent that the disclosed process will yield greater than 60%.

Regarding independent claim 2078:

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3. The Tsai reference teaches a method for treating a hydrocarbon formation in situ comprising providing heat from one or more heaters to a portion of the formation; allowing heat to transfer, and producing a mixture as called for in claim 2078. Although the Tsai reference fails to explicitly disclose the moisture content less than about 15%; this is inherent feature of most bituminous coal formations, as shown on figure 2.11 and on section 4.3 of "Coalbed Methane".

With regards to claim 2088; the Tsai reference does not explicitly teach the transferring by conduction; however this is inherent in a solid substance such as coal. Even though the bulk of the heating in the Tsai method may be done by convection; it is apparent that some unfractured coal must remain, and thus the allowing heat to transfer comprises transferring heat substantially by conduction (that is, substantially within the unfractured portions).

With regards to claim 2080; the Tsai reference teaches a pyrolysis temperature range within a section of the formation between 270 and 400°C (see col. 3, line 42).

With regards to claim 2083; the Tsai reference teaches a flameless combustor (see col. 2, line 32).

With regards to claim 2084; the Tsai reference teaches a natural distributed combustor (see col. 2, line 32).

With regards to claim 2104, the Tsai reference teaches the pressure greater than 2.0 bar.

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With regards to claims 2111 and 2112; the Tsai reference teaches the permeability greater than about 100 md in table 1. The uniform increase in permeability is inherent.

With regards to claim 2113, although the Tsai reference fails to explicitly disclose a Fischer Assay; it is apparent that the disclosed process will yield greater than 60%.

4. Claims 5398, 5400, 5401, and 5402, are rejected under 35 U.S.C. 102(b) as being anticipated by Terry (U.S. Patent number 4,093,025).

Terry teaches a method of treating a hydrocarbon formation including evaluating a moisture content (see col. 7, lines 1-2); providing heat from one or more heaters so that an average temperature is above a pyrolysis temperature; and producing a mixture as called for in claim 5398—with regards to the moisture less than 20%; this is inherent in coal as shown on figure 2.11 and on section 4.3 of “Coalbed Methane”.

A moisture content less than 15% is also inherent in the Terry method (see “Coalbed Methane”) as called for in claim 5400.

A moisture content less than 10% is also inherent in the Terry method (see “Coalbed Methane”) as called for in claim 5401.

Terry also shows at least 7 heaters per production well as called for in claim 5402.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2042, 2043, 2050-2062, 2066, 2067, 2081, 2082, 2089-2101, 2105, and 2106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai, et al. (U.S. Patent number 4,299,285).

With regards to claims 2042 and 2081, electrical heaters are well known to heat air. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used an electrical heater with the Tsai process as called for in claims 2042 and 2081, in order to heat the air.

With regards to claims 2043 and 2082, surface burners are well known to heat air. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a surface burner with the Tsai process as called for in claims 2043 and 2082, in order to heat the air.

With regards to claims 2050 and 2089; the Tsai reference does not teach the thermal conductivity; however, it would have been further obvious to one of ordinary skill in the art at the time of the invention to have practiced the Tsai method in a coal seam having a thermal conductivity of greater than about 0.5W/(m°C) as called for in claims 2050 and 2089; such a formation would be a desirable choice because it would heat more uniformly.

With regards to claims 2051-2062, 2066, 2067, 2090-2101, 2105, and 2106; the nature of hydrocarbons produced from such heating is highly variable, and dependent upon many factors, not least of which is the characteristics of the coal. The components of the produced mixture are deemed to be the results of design variables, including coal characteristics and temperature.

6. Claims 2046 and 2085 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Elkins (U.S. Patent number 2,734,579).

The Tsai reference fails to teach the controlling the temperature and pressure wherein the temperature is controlled as a function of the pressure or the pressure is controlled as a function of the temperature.

Elkins teaches controlling the pressure in order to lower the temperature (col. 3, line 46); this is done in order to help prevent overheating. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Tsai process to have included the temperature is controlled as a function of the pressure or the pressure is controlled as a function of the temperature as called for in claims 2046 and 2085, and as taught by Elkins, in order to prevent overheating.

7. Claims 2047, 2048, 2086 and 2087 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Kasevich, et al. (U.S. Patent number 4,457,365).

The Tsai reference fails to teach the heating rate. With regards to claims 2048 and 2087; it is known to heat at rates of less than 10°C per day, as shown by Kasevich

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(figure 3). It is apparent that this low heating rate is desirable because it results in more uniform heating, and reduces the possibility of hot spots. It would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Tsai method to have included heating at a rate of less than about 10°C per day as called for in claims 2048 and 2087, in order to achieve more uniform heating. The claim limitations drawn to the heating energy are nothing more than well known thermodynamic equations.

With regards to claims 2047 and 2086; it is noted that Kasevich teaches an average of approximately 1.6°/day. It is apparent that when the temperature reaches its highest point (the point at which pyrolysis occurs) the rate of increase would be at the slowest; thus it would be less than about 1°C/day. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Tsai method to have included heating at less than about 1°C/day during pyrolysis as called for in claims 2047 and 2086; in order to achieve more uniform heating. Regarding the limitation of a temperature range of 270°C to 400°C; this is taught by Tsai (col. 3, lines 42 and 44).

8. Claims 2063, 2064, 2102 and 2103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai, et al. in view of Stoddard, et al. (U.S. Patent number 4,463,807).

The Tsai reference fails to explicitly teach the ammonia.

It is well known that ammonia is a byproduct of such heating of coal. This is taught by Stoddart. It is readily apparent that the amount of ammonia is dependent on many design factors, including the formation characteristics (hydrocarbon content, etc.). It would have been obvious to one of ordinary skill in the art at the time of the invention to have practiced the Tsai method, as modified, in a formation with characteristics allowing greater than 0.05% of the produced mixture to be ammonia, as called for in claims 2063 and 2102.

With regards to claim 2064 and 2103; it is well known that one of the chief uses for ammonia is fertilizer; thus it would have been further obvious to one of ordinary skill in the art at the time of the invention to have used ammonia produced from the coal seam for fertilizer as called for in claims 2064 and 2103.

9. Claims 2068-2071, and 2107-2110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai, et al. in view of Gregoli, et al. (U.S. Patent number 6,016,867).

The Tsai reference fails to teach the altering pressure to inhibit production of hydrocarbons having carbon numbers greater than about 25. The Gregoli reference teaches that in a similar in-situ processes, it is beneficial to use high pressure to break heavy hydrocarbons. It is well known that carbons having carbon numbers greater than about 25 are considered to be heavy; and impede production because they are dense and viscous. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Tsai method to have included altering pressure to inhibit production of hydrocarbons having carbon numbers greater than about 25, as

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called for in claims 2068 and 2107, in order to improve production.

The Tsai reference fails to teach the recirculating hydrogen, providing hydrogen, or hydrogenating. The Gregoli reference teaches that in a similar in-situ processes, it is beneficial to use hydrogen to hydrogenate heavy hydrocarbons. It is well known that carbons having carbon numbers greater than about 25 are considered to be heavy; and impede production because they are dense and viscous. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Tsai method to have included recirculating hydrogen as called for in claims 2069 and 2108; providing hydrogen as called for in claims 2070 and 2109; and hydrogenating as called for in claims 2071 and 2110; in order to reduce the heavy hydrocarbons and to improve production.

10. Claim 2040, 2075, 2076, 2079, 2114, 2115, 5396 and 5397 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai, et al. (U.S. Patent number 4,299,285) in view of Van Meurs, et al. (U.S. Patent number 4,886,118).

The Tsai reference fails to teach the at least about 7 heaters for each production well. Note that Tsai teaches: "*the principles are applicable to a multiple of interrelated injection and production wells*" (col. 2, line 8).

The Van Meurs reference teaches a similar in situ heating system, and further teaches that six or twelve heat sources for each production well significantly increases the production (col. 8, line 24).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Tsai method to have included at least about 7 heat

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sources disposed in the formation for each production well, as called for in claims 2075 and 2114, in order to improve production.

With regards to claims 2040 and 2079; the Tsai reference fails to explicitly teach the superposition of heaters. It is apparent that one of ordinary skill in the art would know that the heaters should be spaced to substantially heat the entire formation. Any configuration of heat sources that provides heat to the entire formation would inherently cause superposition of heat, this is shown by Van Meurs; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Tsai method to have included superposition of heat as called for in claims 2040 and 2079; in order to ensure that the entire formation is heated.

With regards to claim 2076 and 2115; the Van Meurs reference teaches the heat sources surrounding the production well; since this includes at least 3 sources this inherently includes a triangle. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Tsai method to have included at least 3 sources in a triangle as called for in claim 2076 and 2115, in order to increase production.

With regards to claims 5396 and 5397; is apparent that the number of heat sources is largely a matter of engineering design. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used at least about 20 heat sources for each production well, as called for in claims 5396 and 5397, based on the desired heating rate and formation heat transmission characteristics.

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11. Claims 2077 and 2116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai, et al.; Van Meurs, et al.; and Salomonsson (U.S. Patent number 2,914,309).

The Van Meurs and Tsai references fail to explicitly teach the unit of heat sources in a triangular pattern and the plurality of units in a repetitive pattern. It is noted that the Van Meurs reference teaches the heat sources surrounding the production well, which would inherently include a triangular pattern.

Salomonsson teaches that it is desirable to have a repetitive pattern in order to cover the area evenly. It is apparent that this is beneficial in order to prevent hot spots. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Tsai method to have included a unit of a triangular pattern and a repetitive pattern of units as called for in claims 2077 and 2116; in order to cover the area evenly.

12. Claim 5399 is rejected under 35 U.S.C. 103(a) as being unpatentable over Terry in view of Elkins (U.S. Patent number 2,734,579).

The Terry reference fails to teach the controlling the temperature and pressure wherein the temperature is controlled as a function of the pressure or the pressure is controlled as a function of the temperature.

Elkins teaches controlling the pressure in order to lower the temperature (col. 3, line 46); this is done in order to help prevent overheating. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Terry

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process to have included the temperature is controlled as a function of the pressure or the pressure is controlled as a function of the temperature as called for in claims 5399, and as taught by Elkins, in order to prevent overheating.

13. Claim 5403 is rejected under 35 U.S.C. 103(a) as being unpatentable over Terry in view of Kasevich, et al. (U.S. Patent number 4,457,365).

The Terry reference fails to teach the heating rate. It is known to heat at rates of less than 10°C per day, as shown by Kasevich (figure 3). It is apparent that this low heating rate is desirable because it results in more uniform heating, and reduces the possibility of hot spots. It would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Terry method to have included heating at a rate of less than about 10°C per day as called for in claim 5403, in order to achieve more uniform heating. The claim limitations drawn to the heating energy are nothing more than well known thermodynamic equations.

Response to Arguments

14. Applicant's arguments filed 9/30/02 have been fully considered but they are not persuasive.

With regards to independent claims 2039 and 2078; applicant has argued that the Tsai reference fails to teach or suggest "providing heat from one or more heaters to at least a portion of the formation". Applicant also provides text from the specification to support a definition of "heater", which would exclude the fire taught by Tsai.

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It is noted that applicant's specification also includes much broader definitions of "heater", which include fire:

"Combustion of a fuel may be used to heat a formation. Combusting a fuel to heat a formation may be more economical than using electricity to heat a formation. Several different types of heaters may use fuel combustion as a heat source that heats a formation. The combustion may take place in the formation, in a well and/or near the surface. Combustion in the formation may be a fireflood."

(page 3, lines 20-28)

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 2041 and 2080; a temperature within this range is shown by Tsai (col. 3, line 42).

Regarding claims 2044, 2045, 2083, and 2084; applicant has not provided arguments to show how the Tsai heater differs from the claimed natural distributed combustor or flameless combustor.

With regards to claim 2049 and 2088; it is noted that the claim broadly calls for "comprises transferring heat substantially by conduction" (emphasis added). It should be abundantly clear that heat transfer in a solid substance such as coal inherently includes conduction.

With regards to claims 2065 and 2104; 50 psi and 500psi are both significantly greater than 2 bar.

With regards to claims 2072, 2073, 2111, and 2112; applicant has failed to provide any evidence that the uniform increase of permeability is not inherent.

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With regards to claims 2074 and 2113; applicant has not shown any evidence that the volatile content of coal is the same as the yield. Note that since the volatile content is reported along with ash content, it clearly cannot be equated to yield. With regards to applicant's assertion that MPEP 2144.03 applies to this rejection; a brief reading of MPEP 2144.03 reveals that section 2144 is titled "Sources of Rationale Supporting a Rejection Under 35 U.S.C. 103" since this rejection was based on 35 USC 102, this section clearly does not apply.

With regards to claims 2040 and 2079; evidence has been provided to support examiner's position that one of ordinary skill in the art would use superposition.

With regards to claims 2042, 2081, 2043, 2082, 2050-2062, 2066, 2067, 2089-2101, 2105, and 2106; applicant's statements that "The features of claim ###, in combination with the features of independent claims 2039 and 2078 respectively, do not appear to be taught or suggested by the cited art." are not at all persuasive. With further regards to applicant's request for a reference (as per MPEP 2144.03); applicant has not specifically pointed out what facts are at issue, however the attached pages from "Coal: Typology-Physics-Chemistry-Constitution" provide evidence that coal is highly variable.

With regards to claim 2046 and 2085; Elkins explicitly teaches "decreasing the injection gas pressure also decreases the combustion zone temperature" (col. 3, line 46). Applicant's own specification discloses:

"In an alternative embodiment, a fluid (e.g., liquid or gas) may be injected in the innermost row of wells, allowing a selected pressure to be maintained in or about the pyrolysis zone."(emphasis added)

Applicant's arguments that the controlling of injection pressure taught by Elkins does not meet the claimed limitation are therefore not persuasive.

With regards to claims 2074 and 2086; Kasevich inherently teaches that the rate of increase of temperature stops (e.g. at the disclosed maximum temperatures—col. 15 line 65 through col. 16, line 11) since the increase of temperature stops, the heating must inherently comprise a rate of increase less than 1.6°C. With regards to applicant's further arguments concerning the Kasevich reference; the claims do not call for "using a desired heating rate to calculate a maximum amount of heating". Kasevich clearly teaches the slow heating rate.

With regards to claims 2063, 2064, 2102 and 2103; applicant's arguments that Stoddard fails to teach the 0.05% ammonia are misplaced---the rejection is that the percent ammonia would be obvious based on design factors, including formation characteristics.

Applicant's arguments concerning the Gregoli reference and claims 2068-2071, and 2107-2110 are not persuasive. Applicant's assertion that the Gregoli process of converting high molecular weight hydrocarbons (e.g. greater than 25 carbon number) into lower weight does not anticipate "to inhibit production...having carbon numbers greater than about 25" is simply not persuasive. Applicant's further assertions concerning the providing hydrogen are clearly contradicted by figure 1 of Gregoli.

With regards to claims 2075, 2076, 2077, 2114, 2115, 2116, 5396, and 5397; applicant's statements that "The features of claim ###, in combination with the features

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of independent claims 2039 and 2078 respectively, do not appear to be taught or suggested by the cited art.” are not at all persuasive.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 6:00 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are

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(703)305-3597 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-4177.

JJK
December 6, 2002

A handwritten signature in black ink, appearing to read 'David Bagnell', is positioned above the printed name.

DAVID BAGNELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600